S T A T E O F N E W Y O R K

1841

2009-2010 Regular Sessions

I N A S S E M B L Y

January 12, 2009

Introduced by M. of A. DINOWITZ, GALEF, MAYERSOHN -- Multi-Sponsored by -- M. of A. GOTTFRIED, WEISENBERG -- read once and referred to the Committee on Transportation

AN ACT to amend the vehicle and traffic law, in relation to prohibiting the use of a mobile telephone while operating a bicycle and to prohibit local governments from regulating the use of mobile telephones by bicycle operators and providing for the repeal of certain provisions upon expiration thereof

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The vehicle and traffic law is amended by adding a new section 1238-a to read as follows:

S 1238-A. USE OF MOBILE TELEPHONES; PROHIBITED. 1. FOR THE PURPOSES OF THIS SECTION, THE FOLLOWING TERMS SHALL MEAN:

(A) "MOBILE TELEPHONE" SHALL MEAN THE DEVICE USED BY SUBSCRIBERS AND OTHER USERS OF WIRELESS TELEPHONE SERVICE TO ACCESS SUCH SERVICE.

(B) "WIRELESS TELEPHONE SERVICE" SHALL MEAN TWO-WAY REAL TIME VOICE TELECOMMUNICATIONS SERVICE THAT IS INTERCONNECTED TO A PUBLIC SWITCHED TELEPHONE NETWORK AND IS PROVIDED BY A COMMERCIAL MOBILE RADIO SERVICE, AS SUCH TERM IS DEFINED BY 47 C.F.R. S 20.3.

(C) "USING" SHALL MEAN HOLDING A MOBILE TELEPHONE TO, OR IN THE IMMEDIATE PROXIMITY OF, THE USER'S EAR.

(D) "HAND-HELD MOBILE TELEPHONE" SHALL MEAN A MOBILE TELEPHONE WITH WHICH A USER ENGAGES IN A CALL USING AT LEAST ONE HAND.

(E) "HANDS-FREE MOBILE TELEPHONE" SHALL MEAN A MOBILE TELEPHONE THAT HAS AN INTERNAL FEATURE OR FUNCTION, OR THAT IS EQUIPPED WITH AN ATTACHMENT OR ADDITION, WHETHER OR NOT PERMANENTLY PART OF SUCH MOBILE TELEPHONE, BY WHICH A USER ENGAGES IN A CALL WITHOUT THE USE OF EITHER HAND, WHETHER OR NOT THE USE OF EITHER HAND IS NECESSARY TO ACTIVATE, DEACTIVATE OR INITIATE A FUNCTION OF SUCH TELEPHONE.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

LBD03152-01-9

(F) "ENGAGE IN A CALL" SHALL MEAN TALKING INTO OR LISTENING ON A HAND-HELD MOBILE TELEPHONE, BUT SHALL NOT INCLUDE HOLDING A MOBILE TELEPHONE TO ACTIVATE, DEACTIVATE OR INITIATE A FUNCTION OF SUCH TELEPHONE.

(G) "IMMEDIATE PROXIMITY" SHALL MEAN THAT DISTANCE AS PERMITS THE OPERATOR OF A MOBILE TELEPHONE TO HEAR TELECOMMUNICATIONS TRANSMITTED OVER SUCH MOBILE TELEPHONE, BUT SHALL NOT REQUIRE PHYSICAL CONTACT WITH SUCH OPERATOR'S EAR.

2. (A) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, NO PERSON SHALL OPERATE A BICYCLE UPON A PUBLIC HIGHWAY, BICYCLE LANE OR ROADWAY WHILE USING A MOBILE TELEPHONE TO ENGAGE IN A CALL WHILE SUCH BICYCLE IS IN MOTION.

(B) AN OPERATOR OF A BICYCLE WHO HOLDS A MOBILE TELEPHONE TO, OR IN THE IMMEDIATE PROXIMITY OF HIS OR HER EAR WHILE SUCH BICYCLE IS IN MOTION IS PRESUMED TO BE ENGAGING IN A CALL WITHIN THE MEANING OF THIS SECTION. THE PRESUMPTION ESTABLISHED BY THIS SUBDIVISION IS REBUTTABLE BY EVIDENCE TENDING TO SHOW THAT THE OPERATOR WAS NOT ENGAGED IN A CALL.

(C) THE PROVISIONS OF THIS SECTION SHALL NOT BE CONSTRUED AS AUTHORIZING THE SEIZURE OR FORFEITURE OF A MOBILE TELEPHONE, UNLESS OTHERWISE PROVIDED BY LAW.

3. SUBDIVISION TWO OF THIS SECTION SHALL NOT APPLY TO (A) THE USE OF A MOBILE TELEPHONE FOR THE SOLE PURPOSE OF COMMUNICATING WITH ANY OF THE FOLLOWING REGARDING AN EMERGENCY SITUATION: AN EMERGENCY RESPONSE OPERATOR; A HOSPITAL, PHYSICIAN'S OFFICE OR HEALTH CLINIC; AN AMBULANCE COMPANY OR CORPS; A FIRE DEPARTMENT, DISTRICT OR COMPANY; OR A POLICE DEPARTMENT, (B) ANY OF THE FOLLOWING PERSONS WHILE IN THE PERFORMANCE OF THEIR OFFICIAL DUTIES: A POLICE OFFICER OR PEACE OFFICER; A MEMBER OF A FIRE DEPARTMENT, DISTRICT OR COMPANY; OR THE OPERATOR OF AN AUTHORIZED EMERGENCY VEHICLE AS DEFINED IN SECTION ONE HUNDRED ONE OF THIS CHAPTER, OR (C) THE USE OF A HANDS-FREE MOBILE TELEPHONE.

4. A VIOLATION OF SUBDIVISION TWO OF THIS SECTION SHALL BE A TRAFFIC INFRACTION AND SHALL BE PUNISHABLE BY A FINE OF NOT MORE THAN ONE HUNDRED DOLLARS.

S 2. Except as otherwise provided in section one of this act, no municipal corporation, as defined in section 2 of the general municipal law, shall, after June 1, 2010, enact any local law, ordinance or code relating to the operation of a bicycle while using a mobile telephone unless the terms of such law, ordinance or code are identical to section 1238-a of the vehicle and traffic law, as added by section one of this act. The provisions of this act shall invalidate and preempt any such local law, ordinance or code, enacted after June 1, 2010 unless the terms of such law, ordinance or code are identical to section 1238-a of the vehicle and traffic law, as added by section one of this act.

S 3. The provisions of this act shall preempt any local law, ordinance, code, rule or regulation relating to the operation of a bicycle while using a mobile telephone, except that nothing in this act shall preclude any state or local agency, which, by permit, license or registration regulates the business or professional activities of individuals from imposing more stringent restrictions than provided in this act for the use of mobile telephones upon such individuals during the course of engaging in the business or professional activity that is the subject of such agency's permit, license or registration.

S 4. For the purpose of informing and educating persons who operate bicycles in this state, any law enforcement official authorized to issue appearance tickets pursuant to the vehicle and traffic law may, during the period commencing November 1, 2010 and ending November 30, 2010, stop a bicyclist and issue verbal warnings to persons who would be in

violation of the provisions of section 1238-a of the vehicle and traffic law, as added by section one of this act, were the provisions thereof effective on the day such warning is issued.

S 5. The court shall waive any fine for which a person who violates the provisions of section 1238-a of the vehicle and traffic law, as added by section one of this act, would be liable if such person supplies the court with proof that, between the date on which he or she is charged with having violated such section and the appearance date for such violation, he or she possesses a hands-free mobile telephone as defined in paragraph (e) of subdivision 1 of section 1238-a of the vehicle and traffic law, as added by section one of this act; provided, however, that such waiver of fine shall not apply to a second or subsequent violation under such section.

S 6. This act shall take effect immediately, except that sections one, three and five of this act shall take effect December 1, 2010; section two shall expire and be deemed repealed December 1, 2010; section four of this act shall take effect November 1, 2010 and shall expire and be deemed repealed December 1, 2010; and section five of this act shall expire and be deemed repealed March 1, 2011.